

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH

Petitioner,

v.

PEAM GROUP, INC. d/b/a/ FELIX  
RESTAURANT AND LOUNGE  
Respondent

Case Nos.: I-00-70341  
I-00-20404

**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-70341) served by first-class mail, the Government charged Respondent Peam Group Inc. d/b/a Felix Restaurant and Lounge with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.<sup>1</sup> The Notice of Infraction alleged that Respondent violated § 700.3 on September 17, 2001 at 2406 18<sup>th</sup> Street, N.W., and sought a fine of \$1,000.

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<sup>1</sup> 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on October 18, 2001, this administrative court issued an order finding Respondent in default, assessing a statutory penalty of \$1,000 as required by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (No. 00-20404) on October 25, 2001. Respondent failed to answer that Notice within twenty days of service. Accordingly, on December 11, 2001, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing statutory penalties totaling \$2,000 pursuant to D.C. Official Code § 2-1801.04(a)(2)(B). The Final Notice of Default also set January 15, 2002 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines or statutory penalties.

Gerard Brown, the charging inspector in the captioned case, appeared at the January 15<sup>th</sup> hearing on behalf of the Government. Alan Popovsky, president of Respondent Peam Group, Inc., appeared on behalf of Respondent. Respondent entered an untimely plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a suspension or reduction of any fines or statutory penalties.

As to the substance of the violation, Mr. Popovsky stated that, in consultation with Inspector Brown, he is training his employees in proper solid waste management, and has made such training a formal part of his staff manual. Mr. Popovsky stated that he has a daily hauling contract with Allen Services. Mr. Popovsky noted that he had been having on-going problems

with Allen Services regarding late afternoon (as opposed to morning) pick-ups and missed pick-ups, and represented that he has had discussions with Allen Services and there have been some improvements. Finally, Mr. Popovsky stated that Respondent has had twice-monthly pest control services through Ehrlich Pest Control since Respondent's restaurant opened in 1995.

As to Respondent's failure to timely answer both the first and second Notices of Infraction, Mr. Popovsky explained that he personally did not receive any notice of these proceedings until receiving the December 11, 2001 Final Order of Default. Mr. Popovsky indicated, however, that Respondent may have received the prior documents, but its employees did not direct these documents through the proper channels for a response. Mr. Popovsky noted that, at the time of the violation, there were two employees working in his establishment in the mornings, and these employees usually took in the mail. Mr. Popovsky described one of the employees as an older, sometimes forgetful gentleman, and the other as a gentleman with a limited ability to read or speak English. Mr. Popovsky represented that he has now hired a manager for the mornings to handle such correspondence.

The Government recommended that there be no reduction or suspension in the authorized fine, and offered no recommendation as to the appropriateness of a reduction or suspension of the assessed statutory penalties.

## **II. Findings of Fact**

1. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 at 2406 18<sup>th</sup> Street, N.W. on September 17, 2001.

2. On September 17, 2001, Respondent failed to store and containerize for collection solid wastes in a manner that “will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard” at 2406 18<sup>th</sup> Street, N.W. 21 DCMR 700.3.
3. Respondent has undertaken significant efforts to attempt to comply with the requirements of § 700.3, including promptly training its employees in proper waste management techniques consistent with the Government’s recommendation, having its trash picked hauled away daily through Allen Services, and having twice-monthly pest control services for Respondent’s building and the surrounding area through Erhlich Pest Control.
4. Respondent has accepted responsibility for its unlawful conduct.
5. There is no evidence in the record of a prior history of non-compliance by Respondent.
6. Respondent’s last known business address is 2406 18<sup>th</sup> Street, N.W., Washington, DC.
7. The Government served the first and second Notices of Infraction by first-class mail upon Respondent at its last known business address, and there is no evidence in the record that these documents were returned as undeliverable by the United States Postal Service (“USPS”).
8. The October 18, 2001 Notice of Default and the December 11, 2001 Final Notice of Default included copies of the Notices of Infraction and were served by this

administrative court by priority mail/delivery confirmation upon Respondent at its last known business address. According to the USPS delivery confirmation receipts contained in the record, these documents were actually delivered to Respondent.

9. Respondent's president did not personally receive notice of these proceedings until receiving the December 11, 2001 order. At the time of the violation, there were two employees working at Respondent's establishment in the mornings who usually took in the mail. One of the employees is an older, sometimes forgetful gentleman, and the other is a gentleman with a limited ability to read or speak English.
10. Subsequent to the issuance of the Notices of Infraction, Mr. Popovsky hired a manager for the mornings to, among other things, be responsible for handling incoming mail.
11. Respondent has requested a reduction or suspension of any fines or statutory penalties assessed. The Government has recommended that there be no reduction or suspension in the authorized fine, but has made no recommendation regarding the statutory penalty.

### III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on September 17, 2001. A fine of \$1,000 is authorized for a first violation of this regulation.<sup>2</sup> 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).
2. Respondent has requested a reduction or suspension of the authorized fine. In light of Respondent's acceptance of responsibility, substantial past efforts to attempt to comply with the requirements of § 700.3, promptness in correcting the violation and the lack of a prior history of non-compliance, I will reduce the fine to \$325. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.
3. Respondent has also requested a reduction or suspension of the assessed statutory penalties. The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the statutory penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f).

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<sup>2</sup> The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

4. Respondent explained that it did not respond to the Notices of Infraction because its president did not receive any notice of these proceedings until their receipt of the December 11, 2001 Final Notice of Default. Respondent admits, however, that it may have received the prior notices of these proceedings but, due to employee conduct, those notices may not have been directed to the appropriate person for response.
5. The Notices of Infraction were mailed to Respondent's last known business address, and there is no evidence in the record that they were returned as undeliverable by the USPS. In addition, this administrative court's orders of October 18, 2001 and December 11, 2001, which included copies of the Notices of Infraction, were mailed to Respondent's last known business address and, according to USPS delivery confirmation receipts contained in the record, were actually delivered to Respondent.
6. Accordingly, Respondent received adequate notice of the charges and of the hearing date, as required by the Due Process Clause and the Civil Infractions Act. *See* D.C. Official Code §§ 2-1802.01 and 2-1802.05; *see also* *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).
7. Having received adequate notice of these proceedings, Respondent has failed to demonstrate good cause for its untimely plea. Respondent's explanation that its

employees may be to blame for its failure to timely respond is unavailing as a matter of law under these facts. *Cf.* 16 DCMR 3201.4 (infractions committed by employee considered to have been committed by employer). Moreover, Respondent's admitted knowledge of the limited abilities of the employees in question suggests that they probably should not have been placed in the position of managing the correspondence of a regulated business such as Respondent's restaurant.

8. Accordingly, Respondent is liable for a statutory penalty in the total amount of \$2,000, and it will be imposed without reduction.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a fine and statutory penalty in the total amount of **TWO THOUSAND THREE HUNDRED TWENTY-FIVE DOLLARS (\$2,325)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid



amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **05/02/02**

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Mark D. Poindexter  
Administrative Judge